



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

VIA ELECTRONIC MAIL ONLY

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Dear Tokai Carbon, CB:

We have received the December 18, 2020 letter from Tokai Carbon, CB (“Defendant”), submitting a force majeure notice due to an anticipated delay in Defendants’ compliance with the Consent Decree at its Borger, TX, facility, in *United States et al. v. Sid Richardson Carbon, Ltd.*, 3:17-cv-01792-SDD-RLB (M.D. La. Aug. 14, 2018).<sup>1</sup> The U.S. Environmental Protection Agency (“EPA”) has consulted the Department of Justice. This letter will serve as the initial response and request for further information on behalf of the United States and the States of Louisiana and Texas (“Government Plaintiffs”).

Your letter states that Defendant seeks an extension of all compliance dates associated with the startup of the approved Alternative Emissions Technology at its Borger, TX, facility, to July 15, 2021, due to manufacturer specifications that the epoxy lining required for certain equipment cure at a consistent ambient temperature of at least 55° F for 5 to 7 days, which will not be achieved in Borger, TX until June 2021. Defendant has provided information supportive of its assertion that no alternative materials or procedures are acceptable to the contractor and manufacturer and the use of any alternative would void the warranty. Defendant claims to have misunderstood the manufacturer requirements, and to have previously believed that the installation of the epoxy lining could be done during day shifts, when the temperature threshold would be exceeded. Defendant asserts that it is otherwise on schedule for startup of the approved Alternative Emissions Technology at its Borger, TX, facility, and all other controls required under the Consent Decree.

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<sup>1</sup> We also received related correspondence of December 10, 2020.

At this time, Government Plaintiffs seek additional information to help us evaluate the force majeure claim. Specifically, please provide the information in the attachment to this letter, in satisfaction of Paragraph 70 of the Consent Decree, by date 4 weeks from signing of letter. The Government Plaintiffs' deferral of a decision at this time should not be construed as acceptance of any potential noncompliance with the terms of the Consent Decree.

As you are aware, the Consent Decree requires that the Defendant exercise their "best efforts" to fulfill its obligations under the Consent Decree. Such efforts include "using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay [...] to the greatest extent possible."<sup>2</sup> CD Sid Richardson, Par. 70. Please adhere to the force majeure provisions of the Decree to the extent you believe any specific delays in Defendant's obligations are warranted.

Government Plaintiffs appreciate your efforts to provide timely notice. We believe that maintaining an open and continuing dialogue will best protect human health and the environment, minimize potential misunderstandings and facilitate timely, appropriate decision-making as the process of recovering from this event continues.

Thank you for your attention to these matters. Please feel free to contact me or Kellie Ortega (ortega.kellie@epa.gov) to discuss any of these issues further.

Sincerely yours,

*Thomas P. Carroll*

Thomas P. Carroll  
Acting Director  
Air Enforcement Division  
Office of Civil Enforcement

cc (via email):

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<sup>2</sup> "Force Majeure does not include Defendant's financial inability to perform any obligation under this Consent Decree." Id.

## Attachment

1. Provide the name of the epoxy that is planned to be used at Borger.
2. Provide a technical data sheet that shows mixing and thinning ratios and the anticipated dry and cure times and the environmental conditions that must be maintained for an acceptable cure.
3. Provide a Safety Data Sheet (SDS) or an Air Quality Data Sheet (AQDS) for each of the materials used in the lining. We believe the lining is a two-component coating. If so, provide the SDS for Part A, Part B, and the thinner. If the AQDS is only available for the coating "as mixed" and ready to spray, submit accordingly.
4. List the specific equipment for which the epoxy will be applied for which low overnight temperatures are a concern. Confirm that it is the steel part of the stack (the substrate) that needs to be coated with the epoxy and maintained at the minimum temperature.
5. Confirm whether the minimum temperature needs to be maintained during application only, or whether it needs to be maintained during curing.
6. Provide a list of alternatives, if any, to the epoxy and reasons why any of the alternatives are unable to be used at Borger, including any related correspondence with the contractor and/or manufacturer.
7. Provide all correspondence with the contractor or manufacturer that relates to the schedule for installation of the epoxy-coated equipment.
8. Provide all documentation related to the curing period for the epoxy received from Tokai's contractor and manufacturer prior to November 30, 2020, and specify when Tokai first identified a concern with the epoxy curing period.
9. Provide a detailed proposed schedule for installation and curing of each piece of equipment, prior to the proposed July 15, 2021 compliance date.